In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 290

J. TROSPER WILLIE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 268-270, Pet. 10-11) is reported at 213 F. 2d 624.

JURISDICTION

The judgment of the Court of Appeals was entered June 9, 1954 (R. 271-274) and a petition for rehearing was denied on July 22, 1954 (R. 275). The petition for a writ of certiorari was filed on August 17, 1954. The jurisdiction of this Court is

invoked under 28 U.S.C. 1254(1). See also Rule 22(2) of the Rules of this Court.

QUESTION PRESENTED

Whether the evidence is sufficient to support petitioner's conviction.

STATUTE INVOLVED

18 U.S.C. 1001 provides as follows:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was found guilty on a three-count indictment returned against him in the United States District Court for the Eastern District of Louisiana which charged him with willfully making false statements to the Veterans Administration, in violation of 18 U.S.C. 1001 (R. 1-6, 259). He was sentenced to concurrent terms of imprisonment for one year on each count (R. 261).

The evidence for the Government may be summarized as follows:

Petitioner was the owner and operator of the Louisiana State College of Mortuary Science, an embalming school which veterans of World War II attended under the benefits conferred by the G.I. Bill of Rights. Under his contract with the Veterans Administration, petitioner was to provide each student with certain itemized instruments valued at $67.20 which were to be furnished outright to each student. Petitioner was to be reimbursed for the cost of these instruments upon his presentation of a voucher that the instruments were so furnished (R. 15-16, 18-19). At different times, petitioner submitted vouchers and received reimbursement for instruments which he represented as having been furnished to four students named in the indictment, *i.e.*, Margaret E. Landrum, John T. Verrett, Kenneth Chandler and Steadman P. Barquet, Sr. (R. 21-22).

Each of these four students, as well as Zannie Brazeley who was also named in the indictment, testified that they had not, at any time during their course of study or afterwards, received the instruments despite repeated requests therefor (R. 25, 28-29, 58, 59, 85, 88, 104-105, 116). Two students, Landrum and Verrett, testified that they signed receipts for the instruments upon petitioner's representation that he could not get the instruments for them until the receipts were signed (R. 24-27, 58-59). Brazeley signed such a receipt but only after petitioner gave him a promissory note for $68, the approximate value of the instruments (R. 85-

86). Chandler and Barquet did not sign such receipts (R. 104-105, 116).

Petitioner offered the testimony of a student to the effect that such student had issued instruments to the students named in the indictment (R. 127-131) and testimony of another student that he knew the persons named in the indictment to have received instruments (R. 157), although he had not seen them issued (R. 160). Petitioner himself testified that he had receipts for the instruments from all students named in the indictment but could not find them at the time of trial (R. 211, 219); that he signed the note to Brazeley just to keep peace (R. 212); that he had bought 155 sets of instruments and paid for them in cash (R. 213-215, 234-236, 245-247). The total enrollment in petitioner's school during its operation was 180 (R. 233-234).

No motion for acquittal or a directed verdict was made. The court charged the jury that if they found that any of the veterans named in the indictment received the instruments, petitioner could not be convicted on such charge; and that, even if they found that the veterans did not receive the instruments, petitioner could not be convicted unless the jury also found that petitioner knew that they had not received the instruments (R. 256).

On appeal, the Court of Appeals held that, while it had power to consider a claim of insufficiency of the evidence despite the absence of motion for acquittal, there was presented by the record no such "unfairness and injustice" as would require it to

"subject the record to the intensive scrutiny and search which would be required of us if appellant had, as he should have done, tested the evidence below by a motion for a directed verdict" (Pet. 11).

ARGUMENT

The Court of Appeals recognized the principles enunciated in the cases which petitioner cites (Pet. 7) to the effect that, in order to prevent a miscarriage of justice, an appellate court will inquire into the sufficiency of the evidence even though such sufficiency had not been questioned upon the trial of the case. The court merely found that this was not such a case and that no miscarriage of justice resulted.

It is evident from the Statement, *supra,* that the government presented more than sufficient evidence to sustain the verdict. The issue became largely one of the credibility of the government's witnesses against petitioner's witnesses. Such an issue was one for the jury to resolve.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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